

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 18, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEAN MICHAEL GILLESPIE,

Defendant.

NO: 2:20-CR-120-RMP-1

ORDER DENYING DEFENDANT'S
MOTION FOR EARLY
TERMINATION OF SUPERVISED
RELEASE

BEFORE THE COURT, without oral argument, is Defendant Sean Michael Gillespie's Motion for Early Termination of Supervised Release, ECF No. 9. Having reviewed the motion, the Government's response opposing the motion, the remaining record, and relevant law, the Court is fully informed.¹

¹ Defendant did not request oral argument on the motion. ECF No. 9 at 7. Moreover, the Court finds that oral argument in this matter would not assist the Court in rendering a decision and that the parties' briefing provided them an opportunity to be fully heard. *See* LCivR 7(i)(3)(B)(iii).

1 The Court may terminate an individual’s supervised release obligations “at
2 any time after the expiration of one year . . . if it is satisfied that such action is
3 warranted by the conduct of the defendant released and the interest of justice.” 18
4 U.S.C. § 3583(e)(1). The standard’s focus on the “‘conduct of the defendant’ and
5 ‘interests of justice’ makes clear that a district court enjoys discretion to consider a
6 wide range of circumstances when determining whether to grant early termination.”
7 *United States v. Emmett*, 749 F.3d 817, 819 (9th Cir. 2014). In certain cases, a
8 change in circumstances such as “exceptionally good behavior by the defendant or a
9 downward turn in the defendant’s ability to pay a fine . . . will render a previously
10 imposed term or condition of release either too harsh or inappropriately tailored to
11 serve the general punishment goals of section 3553(a).” *United States v. Miller*, 205
12 F.3d 1098, 1101 (citing *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997)).

13 On September 9, 2005, a jury in the Western District of Oklahoma, case no.
14 5:04-cr-94-C-1, convicted Mr. Gillespie of multiple counts related to arson and the
15 use of a firearm during a crime of violence, in violation of 18 U.S.C. §§
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1 924(c)(1)(A), 844(i) and 26 U.S.C. § 5861(d).² ECF Nos. 61, 70 (W.D. Okla.).³
2 Defendant's crimes arose from him throwing a "Molotov cocktail" into the Temple
3 B'nai Israel. ECF No. 78 (W.D. Okla.). Before sentencing, Defendant wrote a letter
4 to the Temple which contained "racially motivated epithets and claimed that Temple
5 members falsely testified against him at trial." *Id.* at 4; *cf. United States v. Gillespie*,
6 452 F.3d 1183, 1186 (10th Cir. 2006). The court sentenced Defendant to 468
7 months of imprisonment and five years of supervised release. ECF No. 70 (W.D.
8 Okla.).

9 Following an unsuccessful appeal and motion to vacate, the Ninth Circuit
10 granted Mr. Gillespie authorization to file a second § 2255 motion challenging his
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12 ² Defendant's conviction included the following counts: (1) Knowingly Used and
13 Carried a Firearm (Destructive Device) During and in Relation to a Crime of
14 Violence; (2) Knowingly and Maliciously Attempted to Damage, and Did Damage,
15 by Means of Fire and Explosive, a Building Used in Interstate Commerce, and (3)
16 Knowingly and Unlawfully Possessed a Firearm (Destructive Device) Which Had
17 Not Been Registered to Him in the National Firearm Registration and Transfer
18 Record. ECF Nos. 14, 70 (W.D. Okla.).

19 ³ For sake of clarity, all citations to the record for Case No. 5:04-cr-94-C-1 (W.D.
20 Okla.) will include a designation for that district.
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1 conviction in light of *United States v. Davis*, ___ U.S. ___, 139 S. Ct. 2319, 204 L.
2 Ed. 2d 757 (2019). ECF No. 100 (W.D. Okla.). The *Davis* case invalidated the
3 residual clause definition of “violent felony” under 18 U.S.C. § 924(c) as
4 unconstitutionally vague. 139 S. Ct. at 2336. In light of *Davis* and the Tenth
5 Circuit’s holding in *United States v. Salas*, 889 F.3d 681 (10th Cir. 2018), that arson
6 is not a crime of violence, the district court found that Defendant’s sentence must be
7 vacated. ECF No. 104 (W.D. Okla.). On June 5, 2020, the district court dismissed
8 Defendant’s § 924(c) conviction and sentenced him to time served and three years of
9 supervised release to run concurrently on the remaining counts. ECF No. 124 (W.D.
10 Okla.). Defendant’s supervision commenced immediately.

11 In September 2020, Mr. Gillespie’s case was transferred to this district. ECF
12 No. 1. He has not had any violations of supervised release during that time. In the
13 instant motion, Mr. Gillespie states that he “has cut all ties with his extremist past
14 and works daily to build a better life for himself.” ECF No. 9 at 4. He lives with his
15 wife and is pursuing an education in diesel mechanics at Spokane Community
16 College. *Id.* at 5. In his free time, Mr. Gillespie speaks with youth groups “about
17 the dangers of extremism and the importance of acceptance.” *Id.* Moreover, the
18 Court confirmed that his probation officer, Mark Hedge, has no objection to the
19 motion for early termination. Officer Hedge notes that Mr. Gillespie has done well
20 on supervision and maintains regular communication with him.

1 The Government opposes the instant motion, arguing that the positive events
2 of the last eighteen months “portray only a very small portion of Defendant’s
3 history.” ECF No. 10 at 2. Prior to his conviction in the instant case, the
4 Government argues that Defendant admittedly engaged in multiple hate crimes
5 against the Black and Jewish communities. *Id.* at 2–3. While incarcerated,
6 Defendant had a lengthy disciplinary history, which included incidents in June 2014
7 where Defendant “hurled racial slurs at BOP staff members, swung his head in an
8 attempt to assault a BOP officer, and threatened to spear another BOP staff member
9 in the eyes.” *Id.* at 3 (citing ECF No. 10-1 at 7). The Government contends that
10 Defendant continued to engage in violent behavior as late as November 2018. ECF
11 No. 10-1 at 8. Accordingly, the Government argues that Defendant’s “success thus
12 far is a credit to how effective supervision is” for him. ECF No. 10 at 4.

13 Mr. Gillespie requests early termination of supervised release because current
14 travel restrictions prevent him from accepting a union construction job with travel
15 out of district. ECF No. 9 at 6. He also anticipates a need to travel out of district for
16 public speaking engagements about his extremist past and how to combat “hate and
17 violence.” *Id.* The supervising probation officer is unaware of any job offers for
18 Defendant out of district and Defendant. Moreover, it is the general policy of this
19 District’s probation office to allow supervisees to leave the district for work,
20 provided that a timely request is made in order for the supervising probation officer
21 to evaluate and process the request.

1 The Court commends Mr. Gillespie for his progress to date, particularly his
2 commitment to communicating effectively with members of the community as well
3 as with his supervising officer, and maintaining employment and stable housing.
4 However, an individual's self-reported history of compliance with the terms of
5 supervised release does not automatically qualify as exceptional performance that
6 warrants termination of supervision. *See, e.g., United States v. Bauer*, No. CR-09-
7 980 EJD, 2012 WL 1259251 (N.D. Cal. Apr. 13, 2012), at *2 (finding that the
8 defendant's "compliance with release conditions, resumption of employment and
9 engagement of family life" constitute "milestones rather than a change of
10 circumstances rendering continued supervision no longer appropriate").
11 Additionally, the Court agrees with the Government that Mr. Gillespie's good
12 conduct during supervised release supports the conclusion that supervised release
13 has assisted him.

14 Lastly, the Court considers the relevant factors under 18 U.S.C. § 3553(a),
15 including the serious nature of Defendant's arson offense and the need "to promote
16 respect for the law, and to provide just punishment." 18 U.S.C. § 3553(a)(1), (2)(A).
17 Here, Defendant's nearly 40-year sentence was vacated in light of recent Supreme
18 Court and Tenth Circuit precedent, resulting in a new sentence of time served and
19 three years of supervised release. ECF No. 124 (W.D. Okla.). Defendant does not
20 show, nor does the Court find, that the imposed three-year term is unnecessarily
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1 harsh or inappropriately tailored to serve the goals of punishment for a serious arson
2 and firearm offense.

3 The Court finds that Defendant does not present circumstances justifying early
4 termination and the 18 U.S.C. § 3553(a) factors continue to support the original
5 three-year term of supervision imposed. The Court also will not override the
6 supervising officer's discretionary decisions regarding Mr. Gillespie's travel, should
7 Mr. Gillespie make such travel requests to the supervising officer in advance of any
8 need to travel.

9 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for Early
10 Termination of Supervised Release, **ECF No. 9**, is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
12 and provide copies to counsel and to the U.S. Probation Office.

13 **DATED** April 18, 2022.

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15 s/ Rosanna Malouf Peterson
16 ROSANNA MALOUF PETERSON
17 Senior United States District Judge
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